IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt. Dhuli. Versus The Judge, Labour Court & ors.

S.B. Civil Writ Petition No. 1087/2006

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Date of Order: April 16, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Ravindra Singh, for the petitioner.
Mr. Rameshwar Dave, Deputy Govt. Advocate.

BY THE COURT:

By the instant writ petition, the petitioner has challenged the impugned Award Annx.1 dated 3-11-2001 published on 10-6-2002 vide Annx.2 dated 15-5-2002.

I have herd learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the writ petition filed by similarly situated persons, viz. Ramlal S/o Haliya (SBCWP No.4322/2003) came to be allowed by this Court vide order dated 28-4-2005; and the another writ petition filed by similarly situated person, viz. Nanji (SBCWP No. 2967/2003), reported in 2005 (8) RDD 2846 (Raj.), came to be decided on 22-7-2005, modifying the awards awarding compensation in lieu of reinstatement to that of

reinstatement and in pursuance thereof, the aforesaid persons Ram Lal and Nanji have been reinstated in service by the respondent-departments. It is contended that the case of the present petitions is akin to these two persons and, therefore, the impugned award may be modified by granting the relief of reinstatement instead of compensation in lieu of reinstatement as awarded by the Labour Court.

In Mohan Lal Vs. The Management of M/s. Bharat Electronics Ltd., AIR 1981 SC 1253, the Hon'ble Supreme Court held as under:-

> "The last submissions was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd. Vs. P.P. Chopra, (1) Lab LJ 63; and Hindustan Steel Ltd., Rourkela Vs. A.K. Roy, AIR 1970 SC 1401), it was held that the Court before granting reinstatement must weigh all the facts and exercise the discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal, especially where there is an ineffective order of retrenchment, there is neither termination nor cession of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in this case."

In M/S/ Tulsi Das Paul Vs. The 2nd Labour Court, (1972) 4 SCC 205; Vikramadity Pandy Vs. Idustrial Tribunal, Lucknow, (2001) 2 SCC 423; the Hon'ble Supreme Court held that when the order of termination is found to be illegal, the general rule is to grant reinstatement and compensation should be awarded in exceptional circumstances.

In the instant case, the petitioner was appointed as Class IV employee in the year 1986 as Class IV employee and after serving for nearly ten years, her services were terminated with effect from 1-10-1996. The Labour Court, vide award dated 3-11-2001, found the termination/retrenchment order illegal and invalid, however, instead of granting the relief of reinstatement, the Labour Court awarded compensation of Rs.15,500/- along with interest @ 12% per annum. Therefore, keeping in view of the law culled out in the aforesaid decisions of the Hon'ble Supreme Court and this Court and the fact that the writ petitions filed by similarly situated workmen mentioned hereinabove challenging identical orders, were allowed by this Court modifying the award impugned therein, the impugned award requires modification by modifying the relief of compensation to that of reinstatement.

Consequently, the writ petition is allowed; the impugned Award Annx.1 dated 3-11-2001 and the Notification Annx.2 published on 10-6-2002 are modified to the extent that

instead of compensation, the petitioner is entitled for reinstatement with service; however she will not be entitled for any back wages. The respondents are directed to reinstate the petitioner on the post of Class IV within three months from the date of submission of a certified copy of this order by the petitioner to them. There shall be no order as to costs.

(H.R. PANWAR), J.

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